

REMARKS

Claims 25 to 30 are added, and therefore claims 13 to 30 are now pending.

Reconsideration is respectfully requested based on the following.

Claim 24 was objected to for including the words “one of”, which have been removed, as suggested. Withdrawal of the objection is therefore respectfully requested.

Claims 13 to 24 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,124,027 (“Ernst”).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claim 13 provides for “ascertaining, by the evaluation device, whether, *assuming that the preceding vehicle performed a deceleration*, a collision with the preceding vehicle would be avoidable as a function of a reaction time of the driver and a maximum possible deceleration of the motor vehicle”. The Ernst reference does not identically disclose (or suggest) this feature, as provided for in the context of the presently claimed subject matter. As to the text at col. 27, line 15 to col. 28, line 63 (Ernst), even if this section may generally refer to “a decelerating lead vehicle” (Ernst, col. 27, line 37), it does not identically disclose (or even suggest) the feature of “*assuming*” that the lead vehicle begins a deceleration, as provided for in the context of the presently claimed subject matter.

The Ernst reference refers to “three ways to approach the lead vehicle decreasing speed situation” and to a “*measured* lead vehicle deceleration heuristic can be used.” (Ernst, col. 27, line 42-53) (emphasis added). This approach is clearly a *measured* deceleration and not an *assumed* deceleration. Another “approach is to use the lead vehicle count speed equation combined with a *deceleration* threshold *detection* scheme to trigger reductions in v[elocity] when *in the presence of a lead vehicle deceleration* that exceeds the threshold.” (Ernst, col. 28, lines 31-34). This too is clearly a *measured/actual* deceleration and not an *assumed* deceleration. A final approach uses an “optimized values heuristic[, which] . . . uses the lead vehicle constant speed equation with values optimized for a statistical mix of collision scenarios”. (Ernst, col. 27, lines 45-48). The “lead vehicle constant speed equation” (LVCS) is long (Ernst, col. 21, line 62 to col. 22, line 38), but it generally concerns how the system deals with an *already detected deceleration* of the lead vehicle, and what value the system should assume will be the final speed of the lead vehicle -- *after a deceleration has already been performed*. The LVCS has nothing to do with *assuming* a deceleration will occur. For at least these reasons, Ernst does not disclose “assuming that the preceding vehicle performed a deceleration” , as provided for in the context of the presently claimed subject matter.

Still further, Ernst specifically teaches away from another feature of claim 13. Claim 13 recites the feature of “as a function of a reaction time of the driver and *a maximum possible deceleration of the motor vehicle*”, whereas Ernst states that the “system 100 should provide a user with a warning in time for the user to avoid a collision without having t[o] break the vehicle 102 *at a braking level that exceeds a braking threshold at which the user is comfortable*.” (Ernst, col. 19, line 65 to col. 20, line 2). It is abundantly plain that Ernst specifically teaches away from any calculation involving “a maximum possible deceleration of the motor vehicle” as provided for in the context of claim 13.

Accordingly, claim 13 is allowable, as are its dependent claims 14 to 20.

Claim 21 includes features like those of claim 13, and is therefore allowable for essentially the same reasons as claim 13, as are its dependent claims 22 to 24.

New claims 25 to 30 do not add any new matter and are supported by the present application, including the specification. Claims 35 to 30 depend on claim 21, and are therefore allowable for the same reasons.

In summary, all of claims 13 to 30 are allowable.

CONCLUSION

In view of the foregoing, all of claims 13 to 30 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,
KENYON & KENYON LLP

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By: 

Gerard A. Messina
(Reg. No. 35,952)

One Broadway
New York, NY 10004
(212) 425-7200

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